Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
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(2)

No. 88-1381

In The

Supreme Court of the United States

October Term, 1988

JOANNE ROBLES,

Petitioner,

vs.

EXXON CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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March 1989

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38 pp

QUESTION PRESENTED

Whether juror testimony should be received after discharge of the jury to explain the verdict unanimously rendered by the jury.

LIST OF PARTIES

The affiliates and partially owned subsidiaries of Respondent Exxon Corporation are listed in Appendix A to this Brief in Opposition.

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Respondent, Exxon Corporation, hereinafter "Exxon", respectfully prays this Court to deny Petitioner's, JoAnne Robles', hereinafter "Robles", Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, hereinafter "Petition for a Writ of Certiorari".

OPINIONS BELOW

The Opinion of the Court of Appeals for the Fifth Circuit entered on January 12, 1989 is reported at *Robles v. Exxon Corporation*, 862 F.2d 1201 (5th Cir. 1989) and has been reprinted in the Appendix of the Petition for a Writ of Certiorari.

RULES INVOLVED

Fed. R. Evid. 606(b), 28 U.S.C.A.

Inquiry into validity of verdict or indictment.

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

Fed. R. Civ. P., Rule 58 (2)

Entry of Judgment

Subject to the provisions of Rule 54(b):

. . . . . (2) upon a decision granting other relief, or upon a special verdict or a general verdict accompanied

by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

COUNTER STATEMENT OF THE CASE

Petitioner's lawsuit was tried before a jury on March 28 and 29, 1988. After both parties rested, the court read the Charge of the Court to the jury. The charge was prepared by the court and no objection was raised by plaintiff's or defendant's attorneys.

Several hours later, the jury announced that it had reached a verdict. The court assembled the jury, the parties, and the attorneys in the courtroom to receive the verdict. The jury forewoman stated for the record that the jury had reached a unanimous verdict and that she had signed the verdict form indicating the jury's decision. The court then asked the entire panel to indicate whether this was their verdict. All panel members nodded affirmatively.

The clerk of the court took the jury form from the forewoman and read the verdict into the record. The jury found that both Robles and Exxon were negligent and that said negligence was the proximate cause of the injuries to Robles. The jury found Robles 51% negligent and Exxon 49% negligent. The jury did not specify any dollar amount for damages. Having received this verdict, the

court restated to the jury, as was indicated in the Charge of the Court, that Robles would take nothing.

The court discharged the jury stating: "Now you may talk about this case now to anybody you want to, the lawyers or anybody else, but you don't have to talk to anybody. But you may. So now you are excused." The individual jurors then left the courtroom to go their way. The court requested that the attorneys come to chambers. While in chambers, the marshall/bailiff entered and stated that the jury had apparently misunderstood the charge. The court requested the marshall to bring the jury back into the courtroom. The judge conducted an interview of the members of the panel.

The judge specifically told the panel, "You are going to have to tell us what the misunderstanding was." The jurors were not sworn and no questions were permitted by either attorney. Various members of the panel, in answer to the judge's questions, explained what they meant to do with their verdict.

The jury stated that they interpreted the charge to mean that if they found the Plaintiff 51% negligent, the judge would award damages instead of them. The jury came to this conclusion despite the fact that the charge specifically stated twice that a finding of more than 51% negligence on the part of the plaintiff would preclude her recovery.

After hearing this evidence and over the objection of Exxon, the court requested that the jury re-deliberate beginning the next morning. Following re-deliberations, the jury found Robles 49% negligent and Exxon 51% negligent and assessed damages against Exxon.

Exxon moved the court to enter judgment on the first verdict pursuant to Federal Rules of Civil Procedure Rule 58(2). The trial court refused to do so and entered judgment for Robles on the second verdict.

Exxon appealed. The Fifth Circuit reversed and rendered holding that the trial court should have entered judgment on the first verdict pursuant to Rule 58(2) Federal Rules of Civil Procedure and that the colloquia with the jury was impermissible under Rule 606(b), Federal Rules of Evidence, as had been previously decided by the Fifth Circuit in *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486 (5th Cir. 1987).

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

I. THE CASE AT BAR IS FACTUALLY AND LEGALLY DISTINGUISHABLE FROM THE PRECEDENT CITED BY PLAINTIFF

Although the United States Court of Appeals for the Fifth Circuit admitted that its decision in *Peveto v. Sears, Roebuck & Co.*, 807 F.2d 486 (5th Cir. 1987) was in irreconcilable conflict with the United States Court of Appeals for the Second Circuit decision in *Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc.*, 836 F.2d 113 (2d Cir. 1987), the case at bar is factually distinguishable from both decisions and legally distinguishable from *Attridge*. The causes of action in *Peveto* and *Attridge* were product liability causes of action rather than a negligence cause of action as in the case at bar. In the product liability context of both of these cases, "pure comparative fault" was applicable. That is, the plaintiff's recovery was never

barred only reduced. In *Peveto* and *Attridge,* the juries awarded sums to the plaintiffs allegedly intending that to be the ultimate recovery by the Plaintiffs. These sums were then reduced by application of pure comparative negligence principles.

In the case at bar, the jury found Robles was 51% negligent and consistent with the finding refused to award damages as they were instructed. Later, the jury disclosed their mental processes by explaining their assumptions with regard to this verdict.

The court in *Attridge* found the juror interviews to be proper because the interviews were designed to ascertain what the jury decided and not why they did so. 836 F.2d 113, 117. In the case at bar, the jury allegedly found no damages because the jury believed the judge would award damages if the jury found Robles 51% negligent. In fact, the judge did just that, he found no damages for Robles as required by the Texas comparative negligence statute, § 33.001, V.T.C.A. Civil Practice and Remedies Code. In the case at bar, the judge inquired into "why" the jury decided what they did. The Second Circuit would prohibit this inquiry, as well, but would allow testimony on what the jury decided.[1]

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[1] See *United States Football League v. National Football League,* 644 F.Supp 1040 (S.D.N.Y. 1986) where the Court would not allow post trial statements by jurors to the effect that the award of $1.00 in damages would then permit the judge to decide on the damages. Presumably, the Second Circuit in its later opinion in *Attridge* would have distinguished this case from its Circuit if *Attridge* were to apply in a situation such as presented in the case at bar and in the *United States Football League v. National Football League supra.*

In the case at bar, the jury answered five special interrogatories. None of the answers was inconsistent.[2] Barring inconsistencies, the court was required to enter judgment on this verdict and not to return the jury to redeliberate. Rule 58(2) and Rule 49, Federal Rules of Civil Procedure, *Gallick v. Baltimore and Ohio Railroad Company*, 372 U.S. 108, 83 S.Ct. 659 (1963); *Morrison v. Frito-Lay, Inc.*, 546 F.2d 154 (5th Cir. 1977), because it is presumed that the jury acted in accordance with the instructions given them. *Aspen Skiing Company v. Aspen Highlands Skiing Corp.*, 472 U.S. 585 (1985); *City of Los Angeles, et al. v. Heller*, 476 U.S. 1115 (1986).

In the case at bar, the jurors were polled and discharged. The jurors unanimously agreed that the verdict reported was the verdict agreed upon. The Trial Court erred (1) by refusing to enter judgment on this verdict and (2) electing to hear jurors' post-verdict testimony.

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[2] In question No. 1, the jury was asked to consider the evidence and based upon the evidence to determine if Robles was negligent. The jury answered in the affirmative. In Question No. 2, the jury was asked if this negligence was a proximate cause of her injuries. The jury answered in the affirmative. The third interrogatory asked the jury to determine based on the evidence whether Exxon was negligent. The jury determined Exxon was negligent. The fourth interrogatory asked the jury if Exxon's negligence was a proximate cause of Robles' injuries. Once again the jury answered in the affirmative. Finally, the jury was asked to apportion negligence where it found negligence and proximate cause on both parties. The jury found Robles 51% negligent and Exxon 49% negligent. The jury found Robles slightly more negligent than Exxon.

The case at bar differs from *Attridge* in the latter aspect as well. In *Attridge*, the interviews were conducted *in-camera;* whereas, in the case at bar, the jurors gave unsworn testimony in open court.

The case at bar is sufficiently distinguishable from *Attridge* to raise a significant doubt as to whether the Second Circuit would have ruled any differently than the Fifth Circuit ruled. In *Robles*, the jury found for the Defendant; whereas, in *Attridge*, the jury found for plaintiff and the Second Circuit stated their rationale as ascertaining *what* the jury decided and not *why* they did so. In the case at bar, the inquiry went to why the jurors found Robles 51% negligent and not what the jurors decided. Presumably, the Second Circuit would rule the same way given this question.

Exxon agrees that *Peveto* and *Attridge* are in conflict and Exxon urges the reasoning in *Peveto*. However, the case at bar would have been decided by the Second Circuit in the same manner as decided by the Fifth Circuit. As such, Robles does not have standing to urge this Application for Writ of Certiorari.

II. THIS COURT SHOULD DENY THE APPLICATION FOR WRIT OF CERTIORARI BECAUSE THE REASONING IN *ATTRIDGE* IS FLAWED AND *ATTRIDGE* IS AN ISOLATED DECISION WITHOUT SUPPORT.

A. The reasoning in *Attridge* is flawed.

The reliance by Robles on *Attridge* is misplaced because *Attridge* was erroneously decided. The Second Circuit's decision in *Attridge* cannot be reconciled with the purported reasons to justify inquiry into the juror's

mental processes. The Second Circuit claims to ascertain what the jury decided, not why they decided the way they did.

In *Attridge,* the jury was instructed to find what damages Mr. and Mrs. Attridge had suffered. The jury found they suffered $150,000 in damages.

The next jury questions required the jury to apportion fault, just the opposite of the order of questions in the case at bar. The jury apportioned fault between Mr. Attridge and the Defendants and between the Defendants.

After the jury was polled and discharged, a courtroom deputy learned from two jurors that the jury intended the $150,000 to be the recovery for Mr. and Mrs. Attridge. The trial court conducted *in-camera* interviews with all six jurors. Each agreed that the $150,000 was to be the net recovery after reductions.

The question on the verdict form to the jury was the amount of damages suffered by Mr. and Mrs. Attridge and *not* the amount of damages after reductions. If the jury understood reduction of the verdict, then the jury could have calculated the proper amount. The suggestion of "reduction" was made by the judge in his *in-camera* interviews with the jurors.

The more probable explanation is that prior to those *in-camera* interviews the jury did not understand "reduction" and under New York law the defendant was denied the application of the "pure comparative causation" statue as applied to products liability. The jury was not supposed to know the effect of the reduction. The jury

was to decide the facts and not which party they wanted to win or what amount that party should receive. The jury decided Mr. and Mrs. Attridge suffered $150,000 in damages. This is all they were asked to decide. The use of written interrogatories is designed to elicit fact findings to which the law may be applied as opposed to the introduction of Mr. Prejudice and Miss Sympathy in the general verdict situation. *Skidmore v. Baltimore & O. R. Co.*, 167 F.2d 54 (2d Cir. 1948).

In the latter case, the court refused to reverse the trial court's reliance on the general verdict which the Second Circuit characterized as result oriented, but clearly expressed its preference for the use of interrogatories. The use of interrogatories prevents the jury from ignoring the law and preserves the equal application of the law to all parties before the court.

In *Attridge*, Cencorp was denied the application of the comparative negligence law of New York. The trial judge did not determine if the jurors knew that damages would be reduced or not. It is conceivable that the jurors believed Mr. & Mrs. Attridge would be made "whole" by an award of $150,000. Under the law of New York, Mr. Attridge's negligence "takes" some of this award away. The New York Legislature made this decision, but the Second Circuit allowed the jury to override that legislative decision in this instance. When the jury determined that Robles was more negligent than Exxon in the case at bar, Texas law dictated the result that she receive nothing even if the jury wanted Robles to receive some money.

The Fifth Circuit did not allow the jury to override the Texas Legislature in this instance or in *Peveto*. The

statute providing that a plaintiff cannot recover in a simple negligence action if the plaintiff is more negligent than a single defendant was allowed to operate in this case. Tex. Civ. Prac. & Rem. Code § 33.001.

The Fifth Circuit in reviewing the legislative history of Rule 606(b) noted that there are only two situations where juror testimony is allowed and neither was present in this case. Those two situations are the improper receipt by the jury of extraneous prejudicial information or the imposition of an outside, improper influence on a juror to influence his/her decisions. These two exceptions deal with material not addressed in the courtroom, material not subject to cross examination, tests of relevancy, materiality or authenticity.

In the case at bar, there are no allegations that extraneous prejudicial information was improperly brought to the jury's attention, nor are there allegations that jurors were threatened or bribed. Rule 606(b) is clear that testimony by these jurors should not have been elicited.

Nor is a distinction made in Rule 606(b) for unanimity of the jurors. The trial court in the case at bar attempts to distinguish *Attridge* from *Peveto* by stating that in both *Attridge* and the case at bar the jurors were unanimously mistaken as to the effect of their verdict. Similarly, the trial court attempted to distinguish the case at bar from *Peveto* and *Smallwood v. Pearl Brewing Co.*, 489 F.2d 579 (5th Cir. 1974) by indicating that in both of those cases several days passed before juror disagreement with the verdict appeared; whereas, disagreement occurred within minutes of the verdict in the case before the Court. The Fifth Circuit rejected this argument as well noting that

the applicability of Rule 606(b) is determined solely by the nature of the testimony and not the unanimity or timeliness of the juror testimony.

The two exceptions to the receipt of juror testimony, extraneous prejudicial information and improper influences brought to bear on jurors, are, as noted above, necessary subjects of inquiry to insure the integrity of the trial system. Any other exceptions open the door to endless inquiry into the jury's decisional process.

This Court in its recent decision in *Tanner v. United States*, 107 S. Ct. 2739 (1987) reviewed the legislative history behind Rule 606(b). At the time Rule 606(b) was being considered by Congress, two versions were in existence. One was the current version based on the common law rule while the other permitted inquiry into juror misconduct during deliberations. Congress specifically understood, considered, and rejected the version of Rule 606(b) that would have allowed jurors to testify on juror conduct during deliberations including misinterpretation of instructions, or intoxication as alleged in *Tanner*. See *Smallwood v. Pearl Brewing Co.*, supra, at 602 n.30, cert. denied, 419 U.S. 873, where the Fifth Circuit stated that "(W)hether or not the jury misunderstood the charge of the court is not a question to be reexamined after the verdict has been rendered."

B. *Attridge* is an isolated decision without support.

Robles would have this Court believe that the Circuits are evenly divided on the issue of what testimony

can be elicited from jurors and what testimony cannot be elicited. Exxon's research has found only the *Attridge* case on the Circuit Court level for the proposition that Rule 606(b) permits juror testimony to determine what the jury decided and not why the jury decided what they did. Of fifty-one (51) opinions by the United States Circuit Courts of Appeals involving juror testimony addressed by Rule 606(b), only *Attridge* allowed this inquiry. Thirty-six of these cases were criminal cases. Eight of the criminal cases allowed juror testimony under one of the exceptions contained in the rule, i.e. extraneous prejudicial information or outside influence. See *Davis v. United States*, 865 F.2d 164 (8th Cir. 1988); *Stockton v. Commonwealth of Virginia*, 852 F.2d 740 (4th Cir. 1988); *United States v. Buckhanna*, 787 F.2d 230 (7th Cir. 1986); *United States v. Green*, 779 F.2d 1313 (7th Cir. 1985); *United States v. Serido*, 705 F.2d 459 (6th Cir. 1982) (unpublished); *United States v. Greer*, 620 F.2d 1383 (10th Cir. 1980); *United States v. Bohr*, 581 F.2d 1294 (8th Cir. 1978); *United States v. Moten*, 582 F.2d 654 (2d Cir. 1978).

Twenty-five of the criminal cases did not allow juror testimony whether it involved jurors pressuring other jurors, to mistakes in interpreting instructions, to love letters to the prosecutor or to partial deafness. See *United States v. Arpon*, 861 F.2d 164 (8th Cir. 1988); *United States v. Sjeklocha*, 843 F.2d 485 (11th Cir. 1988); *United States v. Casamayor, et al.*, 837 F.2d 1509 (11th Cir. 1988); *United States v. Ford*, 840 F.2d 460 (7th Cir. 1988); *United States v. Murphy*, 836 F.2d 248 (6th Cir. 1988); *Shillcut v. Gagnon*, 827 F.2d 1155 (7th Cir. 1987); *United States v. Miller*, 806 F.2d 223 (10th Cir. 1986); *United States v. Shackelford*, 777 F.2d 1141 (6th Cir. 1985); *United States v. Widgery*, 778 F.2d

325 (7th Cir. 1985); *United States v. Pflaumer*, 774 F.2d 1224 (3rd Cir. 1985); *Gov't of Virgin Islands v. Nicholas*, 759 F.2d 1073 (3rd Cir. 1985); *Abatino v. U. S.*, 750 F.2d 1442 (9th Cir. 1985); *United States v. Gross, et al.*, 745 F.2d 58 (6th Cir. 1984)(unpublished); *United States v. Garcia*, 732 F.2d 1221 (5th Cir. 1984); *United States v. Davila, et al.*, 704 F.2d 749 (5th Cir. 1983); *United States v. Brooks*, 677 F.2d 907 (D.C. Cir. 1982); *United States v. Beltempo, et al.*, 675 F.2d 472 (2d Cir. 1982); *United States v. Bassler, et al.*, 651 F.2d 600 (8th Cir. 1981); *United States v. Horton, et al.*, 646 F.2d 181 (5th Cir. 1981); *Singleton v. City of New York, et al.*, 632 F.2d 185 (2d. Cir. 1980); *United States v. Jelsma*, 630 F.2d 778 (10th Cir. 1980); *United States v. Duzac*, 622 F.2d 911 (5th Cir. 1980); *United States v. D'Angelo*, 598 F.2d 1002 (5th Cir. 1979); *United States v. Hockridge, et al.*, 573 F.2d 752 (2d. Cir. 1978); *United States v. Eagle*, 539 F.2d 1166 (8th Cir. 1976); *Gov't of Virgin Islands v. Gereau, et al.*, 523 F.2d 140 (3rd Cir. 1975).

The Fifth Circuit has allowed juror testimony to clarify what was decided as being different from the verdict delivered in open court. *United States v. Dotson*, 817 F.2d 1127 (5th Cir. 1987). After jurors telephoned and spoke with the judge, the court *sua sponte* amended jury verdict to reflect acquittal on one of ten counts. See also *Young v. United States*, 163 F.2d 187 (10th Cir. 1947), cert denied 323 U.S. 770 (cited by Robles).

In two cases, one criminal and one civil, juror testimony was permitted because the testimony went to the fact that the jurors lied on *voir dire*. The testimony did not involve inquiry into the deliberations of the jury. *United States v. Perkins*, 748 F.2d 1519 (11th Cir. 1984) and *Hard v. Burlington Northern Railroad*, 812 F.2d 482 (9th Cir. 1987).

In the fifteen remaining civil cases, no juror testimony was allowed to explain the verdict or how damages were calculated except *Attridge. Robles v. Exxon, supra, Attridge v. Cencorp Div. of Dover Technologies Int'l, Inc., supra. Sims Crane Service, Inc. v. Ideal Steel Products, Inc.,* 800 F.2d 1553 (11th Cir. 1986); *Peveto v. Sears, Roebuck & Co., supra, Ohanian v. Avis Rent-A-Car System Inc.,* 779 F.2d 101 (2d Cir. 1985); *Michaels v. Michaels,* 767 F.2d 1185 (7th Cir. 1985); *Multiflex, Inc. v Samuel Moore & Company, et al.,* 709 F.2d 980 (5th Cir. 1983); *Scogin v. Century Fitness,* 780 F.2d 1316 (8th Cir. 1985); or juror misconduct in disregarding instructions or pressuring other jurors, *Helm v. Bunch, et al.,* ___ F.2d ___ (6th Cir. 1989)(unpublished); *Maldonado v. Missouri Pacific Railway Company,* 798 F.2d 764 (5th Cir. 1986); *Audette v. Isaksen Fishing Corp.,* 789 F.2d 956 (1st Cir. 1986) and *Martinez v. Food City,* 658 F.2d 369 (5th Cir. 1981).

In two cases testimony on extraneous prejudicial information was allowed, *Stephens v. South Atlantic Canners, Inc., et al.,* 848 F.2d 484 (4th Cir. 1988) and *Haley et al. v. Blue Ridge Transfer Co., Inc.,* 802 F.2d 1532 (4th Cir. 1986) and in one case the parties stipulated to receiving juror testimony to explain the verdict. *E. F. Hutton & Company, Inc. v. Arnebergh,* 775 F.2d 1061 (9th Cir. 1985).

The cases cited by Robles or the trial court either involved no jury interviews, *Smith v. City of Seven Points,* 608 F. Supp. 458, 462 (E. D. Tex. 1985) or involved inquiry before the jury was discharged *Continental Baking Co. v. Old Homestead Bread Co.,* 476 F.2d 97 (10th Cir. 1973).

The situation presented in the case at bar would be an inquiry into "why" and not into what was reported in

the courtroom. To allow an inquiry as urged by Robles, would open the flood gates of appeals. All of the public policy reasons for preventing such inquiry in the first place would be swept aside and few, if any, verdicts would be final. *Tanner v. United States, supra, United States v. Chereton*, 309 F.2d 197 (6th Cir. 1962), cert. denied 366 U.S. 924, 978.

In any event, there are other less intrusive mechanisms to address any perceived problems. For example, in *Nissho-Iwai Company, Ltd. v. Occidental Crude Sales*, 729 F.2d 1530 (5th Cir. 1984), the jury returned its verdict and answers to special interrogatories awarding the plaintiff damages on the contract cause of action, no actual damages on the fraud cause of action, but punitive damages on the fraud cause of action. The trial judge recalled the jury and asked them if they knew that actual damages must be awarded before punitive damages are proper. The foreman said that he did not know that, and the judge sent the jury back to the jury room for further deliberation. The jury returned with a finding of actual damages. Plaintiff and defendant both moved for judgment on the respective verdicts, but before ruling on either, the court *sua sponte* declared a mistrial and ordered a new trial.

In the case at bar, Robles could have filed a motion for new trial had the law been researched and recognized that the juror testimony elicited in this case was a violation of Rule 606(b). One may ask why Robles would move for a motion for a new trial where the trial judge indicated his intent to enter judgment on a verdict favorable to the plaintiff. Even though the judge was offering Robles's counsel a bite from this "second verdict apple",

he, unlike Eve, should not have bitten from the forbidden fruit but should have urged an entry of judgment on the first verdict and moved for a new trial within the appropriate time limits. Ignorance of the law is no excuse. In this case, the Fifth Circuit has been clear in its pronouncements on this issue. The jurors' mistake as to the instructions or the effect of their answers on the law is not an area of inquiry once the jury has been discharged. *Smallwood v. Pearl Brewing Co., supra; Chicago, Rock Island & Pacific Railroad v. Speth,* 404 F.2d 291, 295 (8th Cir. 1968); *McNulty v. Borden Inc.,* 542 F.Supp. 655 (E.D. Pa. 1982).

CONCLUSION

In the first instance, *Robles* is distinguishable from *Attridge,* upon which the plaintiff relies. *Robles* is neither *Peveto* nor *Attridge,* the two cases in conflict. *Robles* is a much clearer case than either of those cases, according to the Fifth Circuit, in that *Robles* does not involve what was decided but why it was decided. As such, it must be questioned whether *Robles* has proper standing to urge this conflict between the Fifth, Sixth and Eighth Circuits on the one hand and the Second Circuit on the other.

Secondly, Exxon urges this court to deny this Petition for Writ of Certiorari because the Fifth Circuit's decision correctly interprets Rule 606(b) and recognizes all of the many policy reasons for not inquiring into the jurors' mental processes in arriving at a verdict. All of the cases in which juror testimony has been received are distinguishable from the case at bar. These cases either involved conflicting answers to special interrogatories,

which is addressed by Rule 49, Federal Rules of Civil Procedure, receipt of testimony before the jury was discharged, which is not prohibited by Rule 606(b), testimony limited to the two exceptions to Rule 606(b), and finally, receipt of testimony in limited circumstances to determine *what* the jury decided as opposed to *why* they reached the verdict reported in open court. Based on the above and foregoing, Respondent, Exxon Corporation, moves this Court to deny Robles' Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit in this case.

Respectfully submitted,

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Exxon Corporation

APPENDIX

EXXON CORPORATION

Affiliates and Subsidiaries – Not Wholly-Owned*

Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C. A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
Aircraft Fuel Supply B. V.
Aishin Sekiyu K. K.
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company
Aramco Overseas Company
Aramco Services Company
Asakawa Sekiyu K.K.
Asociacion Civil "Colegio Internacional de Caracas"
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
BEB Erdgas und Erdol GmbH, Hannover
BT Asia Securities Limited
B.W.O.C., Inc.
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K. K.
Bayerische Erdgasleitung G.m.b.H.
Beaverhill Resources Limited
Bel-Air Entreposage S. A.
BRIGITTA Erdgas und Erdol GmbH, Hannover
Bryan Woodbine Gathering Inc.
Byron Creek Collieries (1983) Limited

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*Does not include companies with less than 5% Exxon Ownership.

Carlew Inc.
Carnduff Gas Limited
Cary Chemicals Inc.
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Commercial Polymers Pty. Ltd.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Comptoir Oxonnaxien des Combustibles (C.O.C.)
Computer Centrum Groningen B.V.
DFTG Deutsche Flussigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daiichi Kouyu K. K.
Demulsificantes Del Orinoco, C.A.
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdol GmbH, Hannover
Elwerath Erdol und Erdgas AG
Emirates Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdolleitung G.m.b.H.
Energie Marketing Service GmbH (EMS)
Entrepot Petrolier de l'Aveyron (E.P.A.)
Entrepot Petrolier de Mulhouse (E.P.M.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Esso Chemical Alberta Limited
Esso Energie G.I.E.

Esso Exploration and Production Angola Inc.
Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Resources N.W.T. Limited
Esso Resources Ventures Limited
Esso Societe Anonyme Francaise
Esso Standard Tunisie S. A.
Etablissements Cloarec
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
489061 Ontario Inc.
F. T. Giken Kabushiki Kaisha
F.T. Shyoji K.K.
Federated Pipe Lines Ltd.
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forjas de Colombia, S. A.
Fuji Kogyo K.K.
Gasunie Engineering B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane - Lavera
Gewerkschaft Brassert Erdol und Erdgas GmbH
Gewerkschaft Elwerath & Co. GmbH
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gewerkschaft Gute Hoffnung Erdgas und Erdol GmbH
Gewerkschaft Kuchenberg Erdgas under Erdol GmbH
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier de la Cote D'Azur
Groupement Petrolier de Nantes
Groupement Petrolier du Finistere G.I.E.

Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokushin Bussan K.K.
Hokuyu Sekiyu K.K.
Home Energy Company Ltd.
Home Oil Company Limited
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
Imperial Oil Limited
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha
Industry Promotion Enterprises Limited
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line (NW) Ltd.
Interhome Energy Inc.
Intamix Corporation
Intoplane Service Company Limited
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru
K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Agency
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Marutaka Sekiyu

K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobe Standard Sekiyu K.K.
Kowa Sekivu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu K.K.
Kyushu Eagle K.K.
LPL Investments, Inc.
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft fur luzernisches Erdol
Les Docks des Petroles d'Ambes
Long Beach Oil Development Company
Maasvlakte Coal Terminal B.V.
Maasvlakte Olie Terminal N.V.
Magota Sekiyu K.K.
Mainline Pipelines Limited
Maple Leaf Petroleum Limited
Marugo Gas K.K.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Metro Fuel Co. Ltd.
Mikawa Bussan K.K.
Minerals Limited

Mittelrheinische Erdgas Transport Gesellschaft mit beschrankter
Haftung
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
Mr. Lube Canada Inc.
Mytex Polymers Incorporated
NAM - K 7 B.V.
NAM - K 14 B.V.
NAM - K 15 B.V.
NAM/CLOMS - K 8/K 11 B.V.
NAM/CLOMS - L 13 B.V.
N. V. Nederlandse Gasunie
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B. V.
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Nord-West Oelleitung G.m.b.H.
Northward Developments Ltd.
Nottingham Gas Limited
107580 Canada Inc.
151742 Canada Inc.
158883 Canada Inc.
159129 Canada Inc.
160837 Canada Limited
Office Prive d'Assurances et de Courtages

Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)
Oil Spill Response Limited
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
Osaka Ashyu Nenryou K.K.
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K. K.
P.A.C. S.A.R.L. (Pinson Allegret-Causse)
P. T. Stanvac Indonesia
Pars Investment Corporation –
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petrosvibri S.A.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafeh-Harburg GmbH
Portland Pipe Line Corporation
Primaer Oel GmbH
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S. A.
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rochevert Inc.
Rotterdam Antwerpen Pijpleiding (Belgie)
Rotterdam-Antwerpen Pijpleiding (Nederland) N. V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Genevois (SAPPRO)
S.A.R.L. Viain
SEAG Aktiengesellschaft fur schweizerisches Erdol
S.0.P. - Societa Oleodotti Padani S. p. A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S. A.

Saudi Arabian Lube Additives Company Limited
Schubert KG
Scurry-Rainbow Oil Limited
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de Gestion de Stocks de Securite (SAGESS)
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifiants de Madagascar" PROLUMA S.A.
Societe Belge de Transport par Pipeline
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de la Raffinerie d'Alger
Societe de la Raffinerie de Lorraine
Societe de Manutention de Carburants Aviation (S.M.C.A.)

Societe de Manutention de Carburants Aviation Dakar-Yoff, S. A.
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe Francaise Exxon Chemical
Societe "Geomines-Caen"
Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petrolieres S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Suddeutsche Erdgas Transport Gesellschaft mit beschrankter Haftung
Sun East Company Ltd.
Sydis, Inc.
Syncrude Canada Ltd.
Synergistics Industries Limited
System Plaza Kabushiki Kaisha
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.

Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Takahama Kosan Kabushiki Kaisha
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A. G., Mellingen
Tanklager Altishausen A. G.
Tanklager Gesellschaft, Koln
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
Tecnica Quimica Petrolera, S.A. de C. V.
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tohpren Co. Ltd.
Toko Sekiyu K.K.
Tonen Energy and Marine (Singapore) Pte. Ltd.
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Properties Inc.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K. K.
Tonex Company Limited
Tophus Quen Pty. Ltd.
Towa Compounding Co. Ltd.
Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG - Unterflurbetankungsanlage Flughafen Zurich
United Industry Development Co., Ltd.
Van Salt Water Disposal Company
W.A.G. Pipeline Proprietary Limited

Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Wartempomp Nederland B.V.
Westdeutsche Erdolleitungs-G.m.b.H.
Westgas G.m.b.H.
Westgastransport B.V.
Winnipeg Pipe Line Company Limited
Worex S.N.C.
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshiki Sekiyu Kabushiki Kaisha
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Kaisha Nishi Kobe Bosai Center